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REMARKS

As Indicated by the Examiner and as acknowledged by the Applicant claims 26, 27, 32-38 and 41-46 remain pending in this application. Claims 1-25, 28-31, 39, 40 and 47-60 have previously been cancelled without prejudice. The Applicant would like to thank the Examiner for his efforts with regard to the Official Office Action dated April 27, 2006 related to the above referenced application. The Applicant also wishes to express appreciation for the timeliness of the Official Office Action and to thank the Examiner for his courtesy extended to Applicant's representative Mr. James E. Shultz Jr. during a telephone interview held on April 20, 2006. The substance of this telephone interview is memorialized by the Examiner in the Office Action, as well as, by the Applicant herein.

Turning to paragraph 3 of the Office Action, the Examiner has rejected claims 26-27, 32-38 and 41-46 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Additionally, in paragraph 3, the Examiner has interpreted MPEP §2114 as a totalitarian statement with regard to functional limitations in an apparatus claim.

Initially, the Applicant submits that the MPEP and related case law is quite clear as to interpretation of functional language in a claim limitation. MPEP §2131 states:

In order for a claim to be anticipated under 35 U.S.C. §102, however, each and every element as set forth in the claim must be found in a single prior art reference. MPEP § 2131 (emphasis added).

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Related case law from the Federal Circuit provides further guidance when faced with interpretation of functional language specifically recited in an apparatus claim:

Furthermore, functional language in an apparatus claim requires that the anticipatory reference possess the capability of performing the recited function. *R.A.C.C. Industries Inc. v. Stun-Tech Inc.*, 49 USPQ2d 1793 (Fed. Cir. 1998) ("[I]n *Intel Corp. v. U.S. International Trade Commission*, 948 [sic, 946] F.2d 821, 832, 20 USPQ2d 1161, 1171 (Fed. Cir. 1991), this court interpreted functional language in an apparatus claim as requiring that an accused apparatus possess the capability of performing the recited function.").

MPEP §2173.05(g) provides additional guidance:

"A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." MPEP §2173.05(g).

The Applicant respectfully submits that, similar to interpretation of MPEP §2114 void of other MPEP sections and related case law, the Examiner has isolate merely a portion of the telephone conversation held with Applicant's representative and concluded that the claim language is indefinite. Reference to paragraph [0049] by the Applicant's representative was in response to the Examiner's request to be pointed directly to a description of a structure that is capable of distinguishing vehicular light source from non-vehicular light sources.

Additional portions of the telephone conversation revolved around paragraphs [0018], [0055] and [0062], for example. The Applicant submits that, when taken as a

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whole, the language as currently recited in claim 26 is definite and distinctly claims the subject matter which the Applicant regards as the invention.

Turning to paragraph 5 of the Office Action, the Examiner has rejected claims 26-27, 33, 35-38, 41 and 44-46 under 35 U.S.C. §102(e) as being anticipated by Holtz et al. (U.S. Patent 6,552,342). As discussed previously and during the telephone interview, the Applicant respectfully submits that Holtz et al. does not teach, suggest or imply a vehicular vision system, comprising: an image sensor and a light source, said light source is configured to emit light rays in the non-visible spectrum to illuminate objects within a scene external to a controlled vehicle beyond an exterior surface of a windshield, wherein said light source is configured to operate in synchronous relationship with acquisition of images from said image sensor, the vision system being capable of distinguishing vehicular light source from non-vehicular light sources as recited in claim 26 of the present application. In that claims 27, 33, 35-38, 41 and 44-46 depend from claim 26, the Applicant submits that claims 26-27, 33, 35-38, 41 and 44-46 are in condition for allowance over Holtz et al.

Turning to paragraph 8 of the Office Action, the Examiner has rejected claims 32, 34 and 42-43 under 35 U.S.C. §103(a) as being unpatentable over Holtz et al. In that claims 32, 34 and 42-43 depend from claim 26 and for at least the reasons stated above, the Applicant respectfully submits that claims 32, 34 and 42-43 are in condition for allowance over Holtz et al.

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The Applicant respectfully submits that claims 26-27, 32-38 and 41-46 are in condition for allowance. Therefore, the Applicant respectfully requests that the Examiner reconsider this case. The Applicant submits that this case is now in condition for allowance. The Applicant, therefore, respectfully requests that a timely Notice of Allowance be issued in this case. Please contact the undersigned should additional information be desired.

Respectfully submitted,
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By: Gentex Corporation

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Date

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